No. 33

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

MARGUERITE LORETTA ALDRICH,
Petitioner,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, AND JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

REPLY BRIEF OF PETITIONER, MARGUERITE LORETTA ALDRICH

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SHAVER PRINTING COMPANY, CHARLESTON, WEST VIRGINIA

No. 737

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Counsel for the respondents make four points in their brief. We shall answer them in the order in which they appear, first quoting the proposition of counsel verbatim.

"1. *A judgment void in the state of rendition will not be enforced by the courts of another state.*"

I most heartily agree with this statement. The pertinent question is just when is a judgment void? It is well settled that when the parties to litigation are before the court and the matter at issue or subject matter of the litigation is one which the court may determine, then the court has jurisdiction. This means that the court may decide the case either rightly or wrongly. If a wrong decision is made, then the adverse party may, if he chooses, correct it on appeal. If he does not take advantage of this, then the judgment is final and must stand.

"2. *A judgment entered by a court without jurisdiction is void.*"

This proposition is also a correct one. A typical example of want of jurisdiction is failure to have the proper parties in court. Another typical example is where the court does not have jurisdiction to pass on the subject matter. Such would be the case if a state court undertook to pass on a maritime matter. Maritime matters are exclusively within the jurisdiction of the federal courts. The same is true of crimes for violation of federal statutes.

Counsel, in support of the above proposition, cite the case of *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348, 65 L. Ed. 297, 41 S. Ct. 116. In this case, the defendant, Northern Fire & Marine Insurance Co., was declared an involuntary bankrupt in the U. S. District Court for the State of North Dakota. There was a federal statute in effect at the time which provided that an insurance company could not be adjudged an involuntary bankrupt. After the adjudication had been made and some orders entered in the

course thereof, the court's attention was called to the federal statute and a motion was made to vacate the bankruptcy adjudication. This Court, in the opinion referred to above, rightly held that the bankruptcy court lacked jurisdiction from the outset because a federal statute forbade the very thing which had been done. This is a farcry from the proposition at issue in the instant case.

"3. *A judgment is void if it is beyond the powers granted to the court by the law of its organization, even though the court has jurisdiction over the parties and subject matter.*"

This proposition is clearly wrong. When a court has jurisdiction of the parties and of the subject matter, it necessarily follows that the court may make either a correct decision or a wrong decision. The remedy when an incorrect decision is made is to take it through the regular channels of appeal. We adopt as our argument the dissenting opinion of Judge Calhoun, the most forceful part of which is found in the last paragraph on page 49 of our petition for certiorari. A mere erroneous ruling, if such there be, does not deprive the court of jurisdiction.

Counsel in support of the above proposition cite *United States* v. *Walker*, 109 U. S. 258, 27 L. Ed. 927, 3 S. Ct. 277. This was an action by an administrator *de bonis non* against the surety of the deceased administrator who preceded him in the administration of the estate. The court held that under the statute the administrator *de bonis non* had title only to such assets as had not been administered and that only creditors and distributees could sue for assets turned into cash and the cash not accounted for, which in effect is damages. This case was instituted before a justice of the Supreme Court of the District of Columbia. It was ap-

pealed to this Court where the disposition of the case referred to above was made. The matter of full faith and credit of a judgment of a sister state was not in issue.

Counsel for the respondents quote from the opinion but omit the partinent part thereof. The full statement of the court, including that quoted and that not quoted by counsel for respondents follows:

> "* * * Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void. The limitation was well expressed by Mr. Justice Swayne in Cornett (Nash) vs. Williams, 20 Wall. 226, [87 U. S. XXII, 254] when he said: 'The jurisdiction having attached in this case, everything done, within the power of that jurisdiction, when collaterally questioned is held conclusive of the rights of the parties unless impeached for fraud.'"

It appears, therefore, that the case supports our position not theirs. Counsel for the respondents picked up the wrong book.

Counsel in support of the above proposition also cite *Fishel* v. *Kite*, 101 F. 2d 685. This case was started by an action on a note on which judgment was rendered for the plaintiff by the District Court of the District of Columbia. A writ of *fieri facis* was subsequently sued out on the judgment following which a motion was made to quash the writ. An appeal was taken from the District Court to this Court. This again did not involve the full faith and credit clause of the Constitution of the United States. The action originated in a United States court and was prosecuted on appeal through the regular channels provided for appeals. In dis-

cussing the merits of the case, in the latter part of the opinion it was said:

> "* * * In our view, the statutory provisions in the present case were not jurisdictional. The court had jurisdiction over the parties and the subject matter. It had power to enter a judgment. If it erred in holding that a case had been made, under either its inherent power or statutory authority, still it cannot be said that it has usurped jurisdiction or that its order is an absolute nullity."

This case, therefore, is authority for our position and not the position of the respondents.

Counsel also cite and quote *Armstrong* vs. *Obucino*, 300 Ill. 140, 133 N. E. 58. This was an appeal to the Supreme Court of Illinois from a decision of the Circuit Court of Cook County of that State. The appeal was prosecuted on the theory that the lower court had erred in exceeding its statutory powers. A deed had been made in a foreclosure suit when no statutory authority existed for such type of action. The court rightly held that both the sale and the deed made in pursuance thereof were void. This again is not authority for the proposition before this Court since there is no question about full faith and credit of a judgment of a court of another state.

"4. *Under Florida law, a decree for payment of alimony to continue after the death of the husband is, in the absence of express agreement between the parties, beyond the power of the court, and is therefore void.*"

This proposition is erroneous. In the note of argument accompanying our petition, we set out the finding of the court in *Johnson* vs. *Every*, 93 So. 2d 300 (Florida), in

which the court said: "* * * in the absence of an express contract or a provision in a decree such as the one before us, a husband's liability for alimony terminates with his death." The Supreme Court of that state has never gone on record to the contrary. The Supreme Court of West Virginia has held that the West Virginia courts may make such a valid decree. *Hale* vs. *Hale*, 108 W. Va. 337, 150 S. E. 748. In the instant case, the majority opinion of the West Virginia Supreme Court holds that Florida courts cannot.

In this connection, it is pertinent to note that the Circuit Court of Dade County, Florida, retained jurisdiction of the instant case for the purpose of enforcing the decree. This being the case, counsel for the respondents, if they so desire, may move that Court to vacate the part of the decree which they now say is void. In this way, they could get a ruling from the Florida court. After all, the courts of Florida are the proper forum for deciding what the courts of that State may do under its statutes.

It would create a pandemonium to permit the courts of each state to pass on the merits of the judgments of sister states. To prevent such a condition Section 1 of Article 4 was put in the Constitution. This part of the Constitution is not to be treated lightly. Nor should it be invalidated to suit what respondents say is a hard case.

We respectfully submit that the writ of certiorari herein prayed for should be awarded.

Respectfully submitted,

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